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No. 91-388

In the Supreme Court of the United States

OCTOBER TERM, 1991

JEFFERY RICHARD POWELL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a person who was not in a car when it was stopped has standing to contend that a stop of the car violated the Fourth Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 929 F.2d 1190. The opinion of the district court (Pet. App. 13a-53a) is unreported. The opinions of the magistrate judge (Pet. App. 54a-65a, 66a-101a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 11, 1991. A petition for rehearing was denied on June 11, 1991. Pet. App. 102a. The petition for a writ of certiorari was filed on September 6, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following his conditional plea of guilty in the United States District Court for the Eastern District of Wisconsin, petitioner was convicted of conspiracy to possess and distribute marijuana, in violation of 21 U.S.C. 846. The district court sentenced petitioner to 75 months of imprisonment, to be followed by five years of supervised release. The court of appeals affirmed. Pet. App. 1a-12a.

1. On December 17, 1988, Utah State Trooper Richard Haycock observed a pickup truck topped with a camper shell approaching Interstate 70 from a smaller road running north from Arizona. When the driver of the pickup failed to signal his entry onto the highway, Haycock directed him to pull over. The driver stopped the truck, got out, and walked to the rear of the camper shell to meet the officer. Haycock looked through a window in the camper and noticed that the interior floor of the camper was significantly higher than the level of the truck bed and that the interior ceiling of the camper was about a foot lower than the roof. After a brief conversation, Haycock asked the driver how much marijuana was in the truck; the driver responded that there was none and offered to open the camper for inspection. After the inspection revealed a large amount of marijuana, Haycock arrested Maroda and advised him of his *Miranda* rights. Pet. App. 2a-3a, 17a-24a, 69a-75a.

Maroda then explained to Haycock that he was delivering the marijuana to petitioner in West Bend, Wisconsin, and he agreed to cooperate with federal drug enforcement agents in staging a delivery of the marijuana-laden truck to petitioner. Federal agents took Maroda to Wisconsin, drove the truck there

separately, and then watched as Maroda called petitioner on the telephone. After petitioner arrived and directed Maroda to follow him, the agents observed as Maroda followed petitioner to a house. At that point, the agents arrested petitioner. Pet. App. 3a-4a, 24a-29a, 75a-80a.

2. Petitioner moved in the district court to suppress evidence seized from the camper, arguing that the stop and subsequent search violated the Fourth Amendment. After an evidentiary hearing on petitioner's motion to suppress, the magistrate judge recommended that the motion be denied. Pet. App. 66a-101a. The magistrate judge first concluded that petitioner did not have standing to challenge the stop or the search because petitioner had not introduced any evidence that he owned the truck. Pet. App. 80a-84a. The magistrate judge went on to conclude, however, that if petitioner could establish standing, the motion should be granted because Officer Haycock lacked probable cause to stop Maroda, based on the magistrate judge's conclusion that Maroda's entry onto the highway without using the turn signal did not violate applicable Utah traffic regulations. *Id.* at 84a-91a.

3. At petitioner's request, the magistrate judge conducted a supplemental hearing on the issue of the ownership of the truck. After that hearing, the magistrate judge concluded that petitioner owned the truck. The magistrate judge further concluded that because petitioner had taken extensive steps to maintain privacy in the interior of the truck, he had standing to challenge the search of the truck. Pet. App. 57a-61a. The magistrate judge nevertheless concluded that petitioner's ownership of the truck did not entitle him to challenge the stop. In the magistrate judge's view the stop "was only a deprivation of Maroda's

rights." *Id.* at 62a. Because Maroda's control over the truck gave him the authority to consent to the search, the magistrate judge concluded that petitioner's challenge to the search should fail. *Id.* at 61a-64a.

4. The district court agreed with the magistrate judge that petitioner's motion should be denied. Pet. App. 13a-53a. It did not, however, agree with the rationale articulated by the magistrate judge. First, the district court concluded that Utah law required a turn signal upon entry onto a highway, so that the initial stop was valid. *Id.* at 32a-42a. Second, the court concluded that petitioner did not have standing to challenge the stop or the search because he had failed to establish that he owned the truck. *Id.* at 42a-49a. Finally, the court concluded that, even if petitioner had established that he owned the truck, his motion would still have to be denied, because mere ownership of the truck would not have entitled him to challenge the stop, and because Maroda's consent after the stop validated the search of the interior of the truck. *Id.* at 49a-52a.

5. The court of appeals affirmed. Pet. App. 1a-12a. Finding it unnecessary to decide whether petitioner owned the truck, the court of appeals concluded that, even if petitioner did own it, he did not have a sufficient expectation of privacy in the truck to allow him to challenge the stop. *Id.* at 7a-10a. The court of appeals noted that the Fourth Amendment interests implicated by a vehicle stop "are personal to the driver and passengers in the car stopped, who have their travel interrupted * * *, have their identifying documents inspected * * *, and may even be asked to leave their vehicles." *Id.* at 9a. Accordingly, the court concluded that "a vehicle owner who is not in

his car at the time it is stopped should not, absent unusual circumstances not present in this case, have standing to object to the stop." *Id.* at 10a.[1]

Assuming that petitioner owned the truck, the court of appeals agreed that he had standing to challenge the subsequent search of the truck. Like the magistrate judge and the district judge, however, the court of appeals concluded that Maroda's control over the truck gave him the authority to consent to the search of the camper. Accordingly, that search was valid. Pet. App. 11a.

ARGUMENT

Petitioner contends (Pet. 12-23) that the court of appeals erred in concluding that the owner of a vehicle who is not present when the vehicle is stopped does not have standing to claim that the stop violated the Fourth Amendment. Contrary to petitioner's argument, the decision of the court of appeals correctly applies the principles established by the decisions of this Court and does not conflict with the decisions of other courts of appeals.[2]

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[1] The court noted that a stop "might implicate a vehicle owner's possessory interests, as where the stop meaningfully deprives the vehicle owner of the anticipated use of his car or truck," Pet. App. 10a, but it concluded that no such deprivation occurred here.

[2] In any event, even if this Court were inclined to review the merits of petitioner's contention, this case would be a particularly poor vehicle, because it is not at all clear that petitioner has demonstrated the factual predicate for his claim, ownership of the truck. The district court concluded (Pet. App. 42a-49a) that petitioner did not own the truck, and the court of appeals had no need to reach that question in light of its reasoning on the standing issue (*Id.* at 8a). Accordingly, even if this Court were to accept petitioner's

1. At bottom, petitioner's argument rests on the notion that the existence of a property right—in this case ownership of the object that was stopped—should be determinative of the Fourth Amendment inquiry. This notion is fundamentally inconsistent with almost a quarter of a century of this Court's decisions, starting with *Katz* v. *United States*, 389 U.S. 347 (1967), in which this Court explained that "[t]he premise that property interests control the right of the Government to search and seize has been discredited," *id.* at 353 (quoting *Warden* v. *Hayden*, 387 U.S. 294, 304 (1967)); see *Rakas* v. *Illinois*, 439 U.S. 128, 140 (1978) (explaining that the "inquiry * * * requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect").

In light of these authorities, the proper question to ask is whether the stop of the car in some way invaded any interest of petitioner's protected by the Fourth Amendment. As the court of appeals noted (Pet. App. 9a), a brief traffic stop implicates Fourth Amendment interests because it interferes with the motorist's freedom of travel and causes anxiety. See *Michigan Dep't of State Police* v. *Sitz*, 110 S. Ct. 2481, 2486-2487 (1990); *Berkemer* v. *McCarty*, 468 U.S. 420, 436-437 (1984); *Delaware* v. *Prouse*, 440 U.S. 648, 656-657 (1979). Because these concerns affect only those who are present in the car at the time of the stop (see *United States* v. *Erwin*, 875 F.2d 268, 270 (10th Cir. 1989)), the court of appeals correctly reasoned that such a stop does not ordinarily

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contention, it is unlikely that petitioner would secure reversal of his conviction.

affect persons not present, even the owner of the vehicle.[3]

2. Petitioner contends (Pet. 14-19) that the decision of the court of appeals conflicts with *United States* v. *Shaefer, Michael & Clairton Slag, Inc.*, 637 F.2d 200 (3d Cir. 1980); *United States* v. *Johns*, 707 F.2d 1093 (9th Cir. 1983), rev'd on other grounds, 469 U.S. 478 (1985); and *United States* v. *Dotson*, 817 F.2d 1127, vacated in part on reh'g, 821 F.2d 1034 (5th Cir. 1987). We disagree. In *Shaefer*, the Third Circuit concluded that a corporation had standing to challenge a stop of trucks owned by the company. The court explained that the corporation at the time of the seizure "had a possessory interest * * * through its driver agents" and that the corporation "was present at the seizures in the only way a corporation can ever be present, by its agents, the drivers." 637 F.2d at 203. The courts in *Johns* and *Dotson* simply concluded, like the court below, that

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[3] To be sure, a search of the vehicle might intrude on legitimate expectations of privacy of the owner with respect to items in the vehicle. The court of appeals' decision did not discount this concern, however; in fact it held that petitioner had standing to challenge the search of the interior of the vehicle. See Pet. App. 11a.

Similarly, a lengthy detention might intrude upon the owner's possessory interest in the vehicle by delaying the time at which he could take possession of the vehicle. See *United States* v. *Jacobsen*, 466 U.S. 109, 113 (1984) (noting that a seizure occurs only if the intrusion interferes "with an individual's possessory interests"); *Texas* v. *Brown*, 460 U.S. 730, 747 (1983) (Stevens, J., concurring in the judgment) (noting that a seizure threatens only the "interest in retaining possession of property"). As the court of appeals noted, no such intrusion occurred here: petitioner received the vehicle at about the time he would have if there had been no stop. See Pet. App. 10a.

a search of the contents of an object intruded on the legitimate expectations of privacy of the owner of those contents. See *Johns*, 707 F.2d at 1099-1100; *Dotson*, 817 F.2d at 1135. Neither case addressed petitioner's contention that ownership by itself grants an individual standing to challenge a simple stop of a motor vehicle in which he is not present.[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 1991

[4] Petitioner's reliance (Pet. 18-19) on *United States* v. *Pollock*, 726 F.2d 1456 (1984), is misplaced. In that case, the Ninth Circuit concluded that the defendant had standing to challenge a search of a house based on his "presence on the premises at the time of the search." *Id.* at 1465.

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